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BILL NO. S-92-10-44

SPECIAL ORDINANCE NO. S-196-92

AN ORDINANCE approving Contract #6285-92, OLD MILL ROAD CONCRETE PAVEMENT RESTORATION between NEWELL CONSTRUCTION COMPANY, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract #6285-92, OLD MILL ROAD CONCRETE PAVEMENT RESTORATION by and between NEWELL CONSTRUCTION COMPANY, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the improvement of Old Mill Road between Pettit Avenue and Old Farm Circle by doing spot pavement reconstruction where needed;

involving a total cost of Twenty-Three Thousand Five Hundred Seventy and 50/100 Dollars (\$23,570.50)

SECTION 2. Prior Approval has been requested from Common Council on OCTOBER 13, 1992. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Sam J. Talarico
Council Member

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

CONTRACT NO. 6285-92
OLD MILL ROAD CONCRETE PAVEMENT RESTORATION
(PETTIT AVE. TO OLD FARM CIRCLE) (BOW 4433 FUNDS)
BOARD ORDER NO. 139-92 WORK ORDER NO. 11,009

THIS CONTRACT made and entered into in triplicate this 21 day of OCTOBER, 1992, by and between NEWELL CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

TO IMPROVE OLD MILL ROAD BETWEEN PETTIT AVENUE AND OLD FARM CIRCLE BY DOING SPOT PAVEMENT RECONSTRUCTION WHERE NEEDED.

all according to Res. No. 6285-92 and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of \$23,570.50. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The CONTRACTOR may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure Contractor's compliance with the E.B.E. Rider attached to the contract. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection and will direct the **Contract Compliance Department** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works**. Likewise, when the **Contract Compliance Department** determines that the **CONTRACTOR'S** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the **Board of Public Works** through an **E.B.E. Compliance Final Report**.

Upon receiving both the **Engineering Department's** and the **Contract Compliance Department's** recommendations, the **Board of Public Works** shall issue a final certificate stating the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that the **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contact amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award or any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also requires of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Resolution No. 6285-92.
- b. Instructions to Bidders for Resolution No. 6285-92.
- c. Contractor's Proposal Dated 9/23/92.
- d. Ft. Wayne Street Engineering Drawings accompanying bid packet for Resolution No. 6285-92.
- e. Supplemental Specifications accompanying bid packet for Resolution No. 6285-92.
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- h. Prevailing Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Right-of-Way Cut Permit.
- l. Comprehensive Liability Insurance Coverage.
- m. Minority/Female Employment Hourly Utilization
- n. E.B.E. Rider

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE II: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Public Works of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12:

The CONTRACTOR agrees to complete the work specified in the contract by 7/1/93 after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

BY: Robert C. Newell

Robert C. Newell
President

BY: _____

Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS

Charles E. Layton
Director of Public Works

C. James Owen
C. James Owen
Member

Katherine A. Carrier
Katherine A. Carrier
Member

ATTEST:

Patricia J. Cripe
Patricia J. Cripe, Clerk

Read the first time in full and on motion by J. L. L. L., seconded by , and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on , the day of , 19 , at o'clock M., E.S.T.

DATED: 10-27-92

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by J. L. L. L., seconded by , and duly adopted, placed on its passage. PASSED EOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
<u>TOTAL VOTES</u>	<u>9</u>	<u> </u>	<u> </u>	<u> </u>
<u>BRADBURY</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>EDMONDS</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>GiaQUINTA</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>HENRY</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>LONG</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>LUNSEY</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>RAVINE</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHMIDT</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
<u>TALARICO</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>

DATED: 11-10-92

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORD'NANCE RESOLUTION NO. S-196-92
on the 10th day of November, 1992

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Sandra E. Kennedy
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of November, 1992, at the hour of 1:00 o'clock P, M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 17th day of November, 1992, at the hour of 8:15 o'clock P, M., E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Contract 6285-92, Old Mill Road Concrete Pavement Restoration (Pettit Ave. to Old Farm Circle)

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract 6285-92, is for the improvement of Old Mill Road between Pettit Avenue and Old Farm Circle by doing spot pavement reconstruction where needed. Newell Construction Co., Inc., is the contractor. PRIOR APPROVAL RECEIVED 10/13/92.

EFFECT OF PASSAGE: Spot pavement reconstruction where needed at above location.

EFFECT OF NON PASSAGE:

S-92-10-44

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$23,570.50. (COIT)

ASSIGNED TO COMMITTEE:

BILL NO. S-92-10-44

No Comm

REPORT OF THE COMMITTEE ON
PUBLIC WORKS

SAMUEL J. TALARICO, CHAIR
ARCHIE L. LUNSEY, VICE CHAIR
BRADBURY, LONG

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving Contract
#6285-92, OLD MILL ROAD CONCRETE PAVEMENT RESTORATION between
NEWELL CONSTRUCTION COMPANY, INC. and the City of Fort Wayne,
Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) ~~(RESOLUTION)~~

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Samuel J. Talarico
Archie L. Lunsey
John Bradbury
Julie Long

DATED: 11-10-92

Sandra E. Kennedy
City Clerk